



Maryland Alcohol and Tobacco Commission

MARYLAND ALCOHOL AND TOBACCO COMMISSION FEBRUARY MINUTES

DATE: February 18, 2021

TIME: 3:00 P.M.

PLACE: Maryland Alcohol and Tobacco Commission Headquarters
(Meeting conducted via Microsoft Teams, recorded for replay)

PRESENT: Chair Leonard Foxwell
Vice Chair Barbara Wahl
Secretary Robert Poole
Commissioner Elizabeth "Betty" Buck
Commissioner Eric Morrissette

OTHERS: Anthony Hatcher, Acting Executive Director, Alcohol and Tobacco Commission (ATC)
Jeffrey Kelly, Director, Comptroller of Maryland, Field Enforcement Bureau (FEB)
Jennifer Brezler, Office Administrator, ATC

CALL TO ORDER

Chair Foxwell called the meeting of the Maryland Alcohol and Tobacco Commission to order at 3:02 p.m.

APPROVAL OF THE MINUTES

Chair Foxwell moved to approve the January 29, 2021 meeting minutes. Commissioner Morrissette seconded, and the motion was unanimously approved.

EXECUTIVE DIRECTOR REPORT

Acting Executive Director Hatcher reported the Memorandum of Understanding (MOU) was signed after the January 29, 2021 meeting, is now enforced, and all work has been started within the ATC. From that time forward, 135 alcohol licenses and permits have been issued. Commissioner Morrissette and Acting Executive Director Hatcher have completed the Open Meetings Act training. The office is tracking legislation that have hearings on February 19th and March 5th. Updates will be provided at the next meeting. Chair Foxwell asked if tomorrow's hearing are in Economic Matters or in the Senate EE Committee. FEB Director Kelly responded all hearings will be held in the House Economic Matters Committee, tomorrow, February 18th, at 11:00 a.m. All are statewide



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bills, meaning the laws effect all the jurisdictions in the state. Beginning at 1:30 p.m. on Friday, February 19th, the local bills begin. They are comprised of local interests that effect generally only one jurisdiction.

Chair Foxwell thanked FEB Director Kelly and added if you want to see Democracy in action, you want to see how alcohol legislation gets made, rejected, or modified, log in. In March the process moves over to the Senate Education, Health and Environmental Matters Committee.

Chair Foxwell asked AED Hatcher if he had anything to add to the Executive Director report. AED Hatcher did not.

HISTORY, PRINCIPLES OF MARYLAND ALCOHOL REGULATION

Chair Foxwell thought it would be instructive for the members, and those listening in, that may not be familiar with the regulations and laws that got us to this point, to get a generalize overview of the frame work of alcohol regulation and statute in the State of Maryland. Chair Foxwell turned it over to FEB Director Kelly and AED Hatcher.

FEB Director Kelly gave a presentation titled "All things beer...".

Commissioner Poole asked for a brief overview of how the Federal Alcohol Administration Act (FAA) applies to the three-tier system and how a special occupational tax imposed by the federal government is handled by the state. FEB Director Kelly responded he's not familiar with the special occupational tax. The FAA came out in approximately 1934, it didn't do a lot, it said that beer is a little bit of a different alcoholic product from spirits and wine.

Commissioner Poole asked if the state of Maryland taxed the alcohol content that's manufactured in the state? At the request of FEB Director Kelly, Commissioner Poole added, from a federal level, the alcohol content, the proof, is taxed by the federal government, is it also taxed by the state? FEB Director Kelly replied "Yes". FEB Director Kelly continued, the federal government reserves the right to tax all the alcohol, whether it's made in Maryland or outside of Maryland. In MD we tax in a variety of different way. When wine and spirits come into MD and that means a wholesaler shipped it into the State or a manufacturer made it in the State and now have it to a state of readiness for it to be sold. At that moment the federal tax is paid, the state tax is not. It comes into the State as tax not yet paid and then the taxes aren't due until they distribute the product to a retailer. The taxable event is when it leaves the wholesalers warehouse and goes to the retailers. For beer, the feds tax when its manufactured, Maryland requires pre-payment of beer. It's taxed the moment it's ready to be sold or the moment it enters our state, that's when the taxable event takes place.

Commissioner Poole asked if distilled spirits are \$13.50 per proof gallon. FEB Director Kelly replied distilled spirits are taxed at \$1.50 per gallon, then added beer is \$0.08 per gallon, and wine is \$0.40 per gallon. The only



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difference with spirits is a proof gallon is considered 100% proof or 50% alcohol and any amounts over that there is an additional charge, it's not much, for spirits based on the percentages as they gain beyond 100 proof.

Commissioner Poole asked if there is a manufacturer of alcohol, a distillery, and they sell their product at the location, how do they avoid the tied-house issues related to distribution. FEB Director Kelly replied I don't know that they're mandated to sell only their product because it is their place, it's not my place and their forcing me to sell only their product. It's their own place and their electing to sell only their product, but even beyond that, the power of the general assembly to create law regardless of what it might look like is pretty enormous. In this case, relative to alcohol, unless the general assembly says you may do something, you may not. You can't fill a void thinking you can do something. You can only do expressly what they tell you to do. In this case they expressly said that a distillery may sell a product it produces and so it's limited to the product it produces. Commissioner Buck added to this by saying it works as a good marketing tool for the small craft distillers.

Commissioner Poole asked how malt beverages are taxed. Director Kelly answered, as a beer.

Chair Foxwell asked FEB Director Kelly to expand on the modifications that have occurred over recent years to accommodate the growth in Maryland's craft manufacturing sectors and the number of operating breweries, wineries, and distilleries in the state. FEB Director Kelly expanded on the topic. Acting Executive Director Hatcher stated there are 139 licensed dispensaries in the state.

There were no additional questions from members of the Commission.

ALCOHOL DELIVERY SERVICES

Chair Foxwell elaborated on an issue that has been brought to the Commissions attention by Commissioner Wahl that involves third party distributors that operate in the State of Maryland. A community member reached out to Commissioner Wahl. The community member witnessed a delivery by Drizzly and they didn't appear to check identification.

Acting Executive Director Hatcher responded that home delivery is permitted if the retailer has written authorization from the local (liquor) board. The delivery service acts as a go-between between a retailer and the consumer putting the two in contact with each other. An employee of the retailer makes the delivery.

FEB Director Kelly added there are no third-party delivery services in Maryland. If their operating, they are operating illegally. Drizzly's footprint is all app driven. They are simply a broker. Drizzly's app hooks you up with a retailer in your home jurisdiction and the retailer, or an employee of the retailer, delivers the alcohol to you. The issue has to be the local retailer that made the delivery failed to follow protocol. If we have credible information, we will investigate.



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Chair Foxwell added, Drizzly acts as an administrative broker to connect the customer with the local liquor store. Chair Foxwell asked if Drizzly, or any other player in the marketplace, has an obligation to ensure its local partners are compliant with state and local regulations and laws? Is there any due diligence conducted by Drizzly to ensure they are doing business with reputable local partners?

FEB Director Kelly responded, none of those entities or platforms are regulated and they're not required to be. Drizzly's self-stated rules and protocols require them to verify that any of their partner retailers in our State have to verify, be able to verify, or do verify, that they have a license and a letter of authority from the local liquor board to make deliveries directly to consumers.

Chair Foxwell asked if the Commissioners had any questions. Commissioner Poole asked why third-party distributors are not allowed in the State of Maryland. FEB Director Kelly replied, going back to rule number one, if they (the General Assembly) don't say you can, you can't. There isn't any provision for it. There's no law that says we can have third-party providers and again with alcohol law, if it's not expressly authorized then it's not allowed. It's illegal.

2021 MARYLAND GENERAL ASSEMBLY UPDATE

Director Kelly addressed the following statewide bills.

- HB12 – Delivery of product from an off-premise location. Complimentary cross bill filed in the Senate.
- HB 185 – Eliminates minimum purchases to go into a place. Delegate Branch introduced the bill.
- HB 422 – This bill is a study. The ATC is only directed to be a cooperative entity or body of information to whoever is going to conduct the study. This a study to determine and evaluate minority participation in the alcoholic beverages industry. Complimentary cross bill filed in the Senate. Introduced by Delegate Barnes and Senator Patterson.
- HB506 – Baltimore City's districting plan of Baltimore.
- HB944 - Delivery from a retail Class A to a consumer. This bill seems to allow, not based on a letter of approval or authority, but simply a letter of notification, that a retailer can make a delivery anywhere in the state. Sponsored by Delegate Qi.
- HB996 – Everything about this bill is about healthy foods. This bill exists to address what we call food deserts. It will allow grocery stores and perhaps chain stores to receive beer and wine license. It will allow a grocery store that moved into a priority funding area, and sell a certain number of items, such as fresh meat or produce. Once they meet the qualifications, the local liquor board shall issue that license. Sponsored by Delegate Qi.

Commission Morrissette asked if there is any provision that requires revenue from alcohol sales to stay in the communities that are food deserts. FEB Director Kelly responded he believes the revenues not from the grocery store, but the revenues generated from the licensing fees ultimately go to a fund in further support of communities



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that need help. Acting Director Hatcher state licensing fees will go to the Community Legacy Financial Assistance Fund. The State Treasurer shall hold, and the Comptroller shall account for the fund.

There were no additional questions from members of the Commission.

NEW BUSINESS

Chair Foxwell stated next month they will have to arrive at a census on how they want to run the meetings. Chair Foxwell asked for staff and legal counsel to work with them offline between now and March to come up with a proposed menu of recommendations. To be discussed more at the March meeting.

There were no additional questions from members of the Commission.

Rules of Organization of the ATC

This agenda item was not discussed during the meeting.

Rules for Conducting Business of the ATC

This agenda item was not discussed during the meeting.

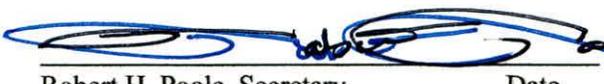
DATE AND TIME OF NEXT MEETING

The next monthly Commission meeting is scheduled for Thursday, March 18, 2021, at 3:00 p.m.

ADJOURNMENT

Chair Foxwell adjourned the meeting at 4:05p.m.

I certify that the foregoing minutes represent the minutes of the Alcohol and Tobacco Commissions meeting on 2/18/2021.


Robert H. Poole, Secretary

Date

4/24/2021

Link to Video of meeting: https://www.youtube.com/watch?v=yqaXNqS_bSA&feature=youtu.be